

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JASON P. RIETZ AND SUSAN D. GAINES,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 65879</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 20, 2015, Louesa Maricle and Sondra W. Mercier presiding. Jason Rietz, Petitioner, appeared *pro se* on behalf of Petitioners. Respondent was represented by Robert A. McDermott, Esq. Petitioners are protesting the 2014 classification of the subject property.

The parties stipulated to a \$469,000 value for the subject property. The dispute is over the subject's classification for 2014 tax year.

Subject property is described as follows:

**784 S. Race Street, Denver
Denver County Schedule No. 05144-04-013-000**

The subject property is located in the East Washington Park neighborhood. Petitioners purchased the property in June of 2011 for \$481,000. On September 19, 2013, an application was received by the Denver Building Department for construction of a new single family residence. An application for demolition was filed on November 18, 2013. Petitioners presented a Foundation Observation Form dated December 23, 2013 indicating completion of excavation (Petitioners' Exhibit 2). A second certificate dated December 29, 2013 was for inspection of the footings.

On December 30, 2013, Jonathan Norloff, Appraiser with the Denver Assessment Division, performed a site inspection and testified that excavation was complete and foundation forms were on site. (Photographs presented in Respondent's Exhibit A). Photographs from a second inspection on January 2, 2014, indicate additional foundation forms in place. Drain and damp-proofing of the

foundation was shown to be completed as of January 16, 2014. Mr. Norloff provided photographs from an inspection on January 21, 2014 and determined that the foundation was then complete. A Certificate of Occupancy was issued on September 15, 2014.

Citing the ARL, Volume 2, Pages 6.9-6.10, and Volume 3, Pages 1.16-1.17, Respondent reclassified the subject from residential use to vacant land based on the status of the property on January 1, 2014. (Respondent's Exhibit A, page 9). Respondent pointed to portions of the ARL dealing with Partially Completed Structures, noting "If the existing foundation is not used for a new structure, the property must be reclassified as vacant land as of January 1 unless a new foundation is in place as of January 1." (ARL, Vol. 2, Page 3.12). Also, "minimally, a completed structural foundation must be in place as of January 1 for the property to be reclassified from vacant land." (ARL, Vol. 2, Page 6.9). Respondent also cited the Board's decision in Docket 47469, *Joseph G. Beeler and Theresa A. Kiss v. Property Tax Administrator* as applicable to this case.

Petitioners contend that similar portions of the ARL require that properties be classified by their intended use. "Incomplete improvements, including foundations, are assessed according to their status as of the assessment date and are to be classified according to their intended use when completed." (ARL, Vol. 2, Page 3.12, Construction in Process). Also, that "structures (improvements) that are partially complete on January 1 are classified according to their intended use when completed." (ARL, Vol. 2, Page 6.9, Partially Completed Structures).

There was little disagreement between parties as to the demolition and construction timeline in this case. What is at issue is the interpretation of the ARL relative to the classification of the subject.

Petitioners presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2014.

First, consideration is given to the procedures and guidelines provided to assessors in the ARL. Respondent placed great reliance on the ARL requirement that "[m]inimally, a completed structural foundation must be in place as of January 1 for a property to be reclassified from vacant land." ARL, Vol. 2, Page 6.9, Partially Completed Structures. The Board notes that the "Partially Completed Structures" section of the ARL deals with factual situations where properties are being reclassified from vacant land to residential. In this case, however, the County has reclassified the property from residential to vacant land.

The Board is persuaded by ARL, Vol. 2, Page 3.12: "Incomplete improvements, including foundations, are assessed according to their status as of the assessment date and are *to be classified according to their intended use when completed.*" (Emphasis added). The Board finds that the subject's intended use has always been residential.

Further, according to the Colorado statutes, "once any property is classified for property tax purposes, it shall remain so classified until such time as its actual use changes or the assessor discovers that the classification is erroneous." Section 39-1-103 (5)(c). C.R.S. Although the subject underwent significant changes over the course of several months, the intended use has always been

residential, with construction underway as of January 1, 2014. Respondent provided insufficient evidence to dispute that the subject's intended use has always been, in fact, residential. Both parties agreed that a valid residential building permit had been granted, excavation and footings had been completed and foundation forms were in place as of the assessment date. Erroneous classification was not cited by Respondent for a change in classification.

The Board concluded that the subject property should be classified as residential use for tax year 2014.

ORDER:

Respondent is ordered to classify the subject property as residential use for tax year 2014.

The Denver County Assessor is directed to change their records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

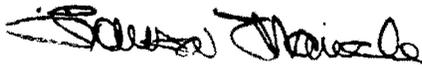
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 21st day of December, 2015.

BOARD OF ASSESSMENT APPEALS

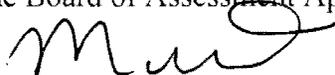


Louesa Maricle



Sondra Mercier

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.



Milla Lishchuk

